

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOSEPH PHILLIP CAITO, III,

Plaintiff,

Case No. 1:06-cv-712

vs.

Beckwith, C.J.
Black, M.J.

FIFTH THIRD BANK,

Defendant.

**REPORT AND RECOMMENDATION¹ THAT PLAINTIFF'S MOTIONS FOR
DEFAULT JUDGMENT (docs. 5, 6) BE DENIED**

This civil action matter is before the Court on plaintiff's motions for entry of default judgment (docs. 5, 6), and defendant's memorandum *contra* (doc. 8).

On October 26, 2006, Plaintiff Joseph Phillip Caito, III initiated this action by filing a *pro se* complaint against defendant Fifth Third Bank. (Doc. 3) Thereafter, on December 29, 2006, plaintiff filed motions for default judgment as a result of defendant's failure to timely answer the complaint. (*See* docs. 5, 6). Defendant then filed a motion for leave out of time to file its answer and motion to dismiss. (Doc. 7). Defendant's motion was granted, and its answer and motion to dismiss were filed on January 11, 2007.²

The procedure governing the entry of default is provided by Fed. R. Civ. P. 55(a), which states in pertinent part:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

² Defendant's motion to dismiss was granted in part, and denied in part. (*See* Doc. 16)

Here, defendant has not failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure. Thus, pursuant to Fed. R. Civ. P. 55(a), entry of default judgment is improper. Accordingly, it is therefore **RECOMMENDED** that plaintiff's motions for default judgment (doc. 5, 6) be **DENIED as MOOT**.

DATE: July 17, 2007

s/Timothy S. Black
Timothy S. Black
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **FIFTEEN (15) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **TEN (10) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).